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**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

FEDERAL HOUSING FINANCE AGENCY,
 in its capacity as Conservator of the Federal
 National Mortgage Association and Federal
 Home Loan Mortgage Corporation;
 FEDERAL NATIONAL MORTGAGE
 ASSOCIATION; and FEDERAL HOME
 LOAN MORTGAGE CORPORATION,

Plaintiffs,

vs.

SFR INVESTMENTS POOL 1, LLC, a
 Nevada domestic limited liability company;
 NEVADA NEW BUILDS, LLC, a Nevada
 domestic limited liability company; and LAS
 VEGAS DEVELOPMENT GROUP, LLC, a
 Nevada domestic limited liability company,

Defendants.

CASE NO.: 2:15-cv-01338-GMN-CWH

**MOTION TO SEAL PORTIONS OF
 PREVIOUSLY FILED DECLARATION
 OF MICHAEL A.F. JOHNSON
 ATTACHED AS EXHIBIT A TO
 PLAINTIFFS' REPLY IN SUPPORT OF
 THEIR MOTION FOR CERTIFICATION
 OF A DEFENDANT CLASS**

Plaintiffs Federal Housing Finance Agency ("FHFA") and Federal Home Loan Mortgage
 Corporation ("Freddie Mac") hereby move pursuant to District of Nevada Local Rule 10-5(b) to

1 seal portions of the previously filed Declaration of Michael A.F. Johnson, which was attached as
 2 Exhibit A to Plaintiffs' Reply in Support of Their Motion For Certification of a Defendant Class
 3 ("Plaintiffs' Reply" or "Reply"). This Motion is supported by the following points and
 4 authorities, the Court's file, and all other papers and arguments in this action that the Court may
 5 consider and that bear upon this issue, and is unopposed by Defendants.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. Introduction**

8 On December 18, 2015, Plaintiffs filed their Reply in Support of Their Motion For
 9 Certification of a Defendant Class (Doc. 73). Attached to that Reply as Exhibit A is the
 10 Declaration of Michael A.F. Johnson (the "Declaration"), and attached to the Declaration are 14
 11 exhibits. *See generally*, Declaration. Exhibit 3 of the Declaration contains a printout of certain
 12 data provided by Freddie Mac, which was used to identify Nevada properties that were subject to
 13 a homeowners' association (an "HOA") foreclosure sale at a time when Freddie Mac owned a
 14 mortgage loan on the property, *i.e.*, the properties at issue in this case. *See* Declaration, ¶¶ 3, 13.

15 After Plaintiffs filed their Reply, Plaintiffs discovered that Exhibit 3 to the Declaration
 16 contained confidential extraneous and irrelevant data. Moreover, the data consisted of
 17 confidential and sensitive financial information. Plaintiffs will submit a corrected Exhibit 3 that
 18 omits the inadvertently filed irrelevant and sensitive financial information, substantially in the
 19 form attached to this motion. Plaintiffs now request that the Court seal the original Exhibit 3
 20 attached to the Declaration.

21 **II. Good cause exists to seal Exhibit 3 of the Declaration**

22 District of Nevada Local Rule 10-5(b) provides that a party wishing to file documents
 23 under seal should do so contemporaneously with a motion for leave to file the documents under
 24 seal. Local Rule 10-5(b). This ensures that confidential and privileged documents will be kept
 25 under seal until a court rules on the motion. *See id.* However, where confidential and sensitive
 26 information has been inadvertently filed, a court may seal the previously filed information to
 27 mitigate continuing harm. *See, e.g., Rich v. Shrader*, 2013 U.S. Dist. LEXIS 161850, *5, 2013
 28 WL 6028305 (S.D. Cal. Nov. 13, 2013) (sealing previously filed exhibits in order to "mitigate

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continuing harm”); *Macon v. UPS*, 2013 U.S. Dist. LEXIS 34263, *16 (W.D. Wash. Mar. 12, 2013) (sealing previously filed documents “given the private nature of the documents at issue”); *Buchanan v. Homeservices Lending LLC*, 2012 U.S. Dist. LEXIS 162170, *4, 2012 WL 5505775 (S.D. Cal. Nov. 13, 2012) (sealing previously filed exhibits attached to a motion to deny class certification because the exhibits “contain plaintiffs’ sensitive financial information”). Courts analyze the sealing of previously filed documents just as they would the sealing of all other documents. *See id.*

Historically courts have recognized a “general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597, 98 S. Ct. 1306, n. 7 (1978). When the record or document to be sealed is a nondispositive motion or pleading, the party seeking to seal it need only make a showing of “good cause.” *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) A motion for class certification is not considered a dispositive motion for purposes of sealing records, and thus the “good cause” standard applies to this request. *See McCrary v. Elations Co., LLC*, 2014 U.S. Dist. LEXIS 8443, *20 n. 6 (C.D. Cal. Jan. 13, 2014) (“Plaintiff’s motions to amend and for class certification are not dispositive, and thus the good cause standard generally applies.”); *Rich v. Hewlett-Packard Co.*, 2009 U.S. Dist. LEXIS 64033, *4, 2009 WL 2168688 (N.D. Cal. July 20, 2009) (“The motion [for class certification] ... is not ‘dispositive’ in the relevant sense, and a showing of good cause is sufficient to justify filing these documents under seal.”); *Buchanan v. Homeservices Lending LLC*, 2012 U.S. Dist. LEXIS 162170, *4, 2012 WL 5505775 (S.D. Cal. Nov. 13, 2012) (holding that a motion to deny class certification is “a nondispositive motion”). This lower “good cause” standard applies to nondispositive documents because “those documents are often unrelated, or only tangentially related, to the underlying cause of action.” *Kamakana*, 447 F.3d at 1179. Good cause exists to seal a document for a number of reasons, including when the document contains “sensitive financial information.” *Buchanan v. Homeservices Lending LLC*, 2012 U.S. Dist. LEXIS 162170, *4, 2012 WL 5505775 (S.D. Cal. Nov. 13, 2012).

1 In the present case, a showing of good cause is sufficient to justify the sealing of Exhibit
2 3 of the Declaration, which was attached to Plaintiffs' Reply in support of the non-dispositive
3 motion for class certification.

4 Good cause exists to seal Exhibit 3. The information contained in Exhibit 3 includes
5 extraneous information that was not used to identify properties at issue, and which is therefore
6 not relevant to this action. The information that is relevant to this action has been preserved and
7 appears in the form of the corrected Exhibit 3 attached hereto. Therefore, there is no reason to
8 keep Exhibit 3 public, as it in no way ensures the public's understanding of the judicial process
9 or any significant public event. *See Kamakana*, 447 F.3d at 1179. Moreover, sealing Exhibit 3
10 would protect sensitive financial information, which courts have specifically held constitutes
11 good cause. *See Buchanan*, 2012 U.S. Dist. LEXIS 162170 at *4.

12 There are also compelling reasons to seal Exhibit 3. The information contained in Exhibit
13 3 includes confidential financial information. The protection of such information is a compelling
14 reason to seal documents in the Ninth Circuit. *See Kamakana*, 447 F.3d at 1182. Because there is
15 both good cause and a compelling reason to seal Exhibit 3 of the Declaration, the Court should
16 grant this Motion to Seal.

17 **III. Conclusion**

18 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion
19 to Seal Portions of the Previously Filed Declaration of Michael A.F. Johnson attached as Exhibit

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1 A to Plaintiff's Reply in Support of Their Motion for Certification of a Defendant Class.

2 DATED this 29th day of January, 2016.

3
4 **FENNEMORE CRAIG, P.C.**

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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the 29th day of January, 2016, a true and correct copy of the **MOTION TO SEAL PORTIONS OF PREVIOUSLY FILED DECLARATION OF MICHAEL A.F. JOHNSON ATTACHED AS EXHIBIT A TO PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR CERTIFICATION OF A DEFENDANT CLASS**, was transmitted electronically through the Court's e-filing electronic notice system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail.

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